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The Failure of Joint Mechanisms – Causes, Consequences and Conclusions

Preamble:

Despite numerous breaches and the non implementation of vital clauses, the Cease-Fire Agreement between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) has held.

However, this could not be said of the joint mechanisms that were agreed during the period of the fragile cease-fire. Neither the Sub Committee for Immediate Humanitarian Rehabilitation Needs (SIHRN) nor the Post Tsunami Operational Management Structure (P-TOMS) ever saw the light of day.

It is my intention to examine the causes and explore the consequences of the failure of these joint mechanisms.

SIHRN:

Let me begin with the Sub Committee for Immediate Humanitarian Rehabilitation Needs, better known by its acronym SIHRN and agreed during the second round of negotiations. The purpose of the subcommittee was to restore normalcy by:

- Identifying immediate humanitarian needs.
 - Deciding on the allocation of funds.
- And
- Implementing projects to meet the needs identified.

SIHRN was to be staffed and manned with equal participation by the GoSL and the LTTE. The World Bank was to be the custodian of funds which were to be called the North East Rehabilitation Fund or NERF.

Soon, the Government's lack of enthusiasm became apparent. Other than the appointment of the directors, one of whom was a Sinhalese, the other a Muslim, little else was done to provide SIHRN with resources in men or material. Nor were measures taken to effectively establish the World Bank as the custodian of the funds.

Although SIHRN received a number of viable proposals which met the criteria set out to qualify as meeting immediate and humanitarian needs-none of them could be pursued further.

The internally displaced continued to languish, little was done to improve the livelihood of the ordinary people and the infrastructure remained in a state of disrepair.

[Here I would like to add my own observation of the situation as I saw in the course of my work with the multi lateral donor agencies between March and May 2003. This work led to direct interaction with the people and I was able to see hope turning into despair and despair into frustration as little was done to make the joint mechanism work and every conceivable obstacle was placed to make it fail)

On the 23rd of April 2003 in a letter addressed to the Government, the LTTE gave expression to this frustration by refusing to participate any more in the meetings of SIHRN unless SIHRN was allowed to function as intended¹. Needless to say nothing was done and SIHRN became dysfunctional.

The leader of the LTTE drew attention to this state of affairs on 27th November 2004 by stating:

“Sub-committees that were set up for the de-escalation of the conflict, for the restoration of normalcy, for the rehabilitation and resettlement of the displaced and for the reconstruction of the war damaged infrastructure, became non-functional”

and concluded that the Tamil people

“cannot continue to be entrapped in a political vacuum without an interim solution or a permanent settlement, without a stable peace and without peace of mind.”

P-TOMS:

Within a month of this speech, the tsunami struck wrecking havoc and devastating the Southern and Northeastern coast of the Island. The Northeastern coast was the worst hit with over 20,000 deaths.

The LTTE's response to the crisis was exemplary and efficient, but was largely confined to meeting the immediate needs of locating and reuniting dispersed families, disposing bodies, clearing debris and providing temporary accommodation to the survivors.

The much more arduous and important task of reconstruction and rebuilding required not only funds but also cooperation between the Government of Sri Lanka and the LTTE. Realizing this, the LTTE approached the Government for the establishment of a Joint Mechanism.

The Sri Lankan Government, after much resistance and six months after the deadly tsunami agreed to a joint mechanism.

This mechanism as we all know was immediately challenged by a constituent member of the ruling coalition and Supreme Court injunction set it aside.

The P-TOMS too thus became a non event.

Causes:

It is possible to discern a number of causes for the failure of these joint mechanisms.

The Mindset:

The major cause that underpins this reluctance of the Sinhala polity to be a party to joint mechanisms is that such mechanisms require conceding to the Tamils a degree of autonomy. In the minds of many Sinhalese, such a concession undermines the notion of Sinhala 'primacy and supremacy' throughout the Island. - A mindset described as the 'Mahavamsa Mindset' by scholars and laymen alike.

The powerful hold that this belief system² has on the Sinhala people cannot be underestimated, wished away or confined to just the 'extremists' as one tends to characterise some of the more vociferous proponents of Sinhala chauvinism.

It is deep rooted, well enshrined and most worryingly has permeated all layers of Sinhala society. Hence, the collective refusal to concede even a semblance of autonomy to the Tamils despite the great deal of sympathy for their plight following the tsunami. There was a massive emotional outcry and truck loads of relief material were sent; number of service clubs (Rotary, Lions) and ordinary people visited the North East, and there was indeed a genuine desire to help the survivors. I experienced this swell of sympathy during my stay immediately after the tsunami. But, it was emotional, immediate and short-lived.

Soon, it became evident, that despite all that sympathy, the Joint mechanisms proposed by the LTTE was viewed with suspicion-as the thin edge of the Tamil wedge for self-rule.

Resistance to the reversal of the economic embargo:

The reluctance to implement SIHRN was also due to a perception that it would strengthen the hand of the LTTE by reversing the effects of the economic embargo imposed by the Premadasa regime in June 1990. Although the embargo was lifted under the February 2002 Cease Fire Agreement, much work needed to be done to address the damage.

In fact this interpretation serves to explain the Sri Lankan Government's failure to honour the clauses under the CFA in respect to fishing and its occupation of prime agricultural land under the classification of High Security Zones.

Weakening the LTTE

Another reason was to force the LTTE to use its own resources and thereby restrict the availability for military purposes.

A reversal of this argument was put forward to argue against a joint mechanism in the tsunami context by claiming that the LTTE would siphon the funds for its own use³ should a joint mechanism come into fore.

The legality:

Then there is the opposition to joint mechanisms grounded in the legalistic position that it is ultra vires the Sri Lankan constitution. This is the argument put forward by eminent Sinhalese lawyers and the basis of the JVP's application to the Supreme Court to have the P-TOMS set aside.

Consequences:

What then are the consequences of this state of affairs where joint mechanisms are agreed but never implemented?

Firstly, it has clearly demonstrated to the world at large that the Sinhala polity is incapable of agreeing to a negotiated solution on its own accord. The Canadian Liberal party parliamentarian, Hon. Maria Minna, following her fact finding mission to Sri Lanka in March 2005 was thus compelled to state:

“To be honest with you, I am not terribly positive about the possibility of getting back to peace discussions if they can’t agree on the reconstruction from the tsunami because that should be an easier one”

Secondly, the Sri Lankan Government’s abject indifference⁴ to the plight of the victims of the tsunami in the Northeast (the Tamil homeland) has shown that GoSL has lost the moral if not the legal right to rule them. As far as the Tamils are concerned Sri Lanka is a failed state.

Thirdly, it has strengthened the Tamil case for self-determination.

Verena Graf, Secretary General of the International League for the Rights and Liberation of Peoples articulated this very point at the 61st Session of the UN Commission of Human Rights in Geneva by pointing out that

“The developments during the last three years compounded by the post-tsunami experiences raise the spectre that time is running out; that there is no hope for the Tamils within a united Sri Lanka, that their only chance lies in fighting for external self-determination.”

Similarly, the International Educational Development in a written statement submitted at the 62nd Session argued that the Tamil people under the existing political structure are unable to effectively address anything of importance to them and as such are entitled to evoke their right to self-determination.⁵

Conclusion:

The causes and consequences of the failure of the joint mechanisms call for restructuring the existing political structure.

Primarily, this involves addressing the legal conundrum between the Sri Lankan constitution and the ground reality of a de-facto state in the Northeast of the Island.

¹ The relevant passage read as follows: *“In the last few months, from announcements made at our meetings, expectations among the people of the Northeast have been raised to a high level. Therefore it would be meaningless for the sub-committee to continue to meet regularly without any tangible action on the ground”*

² Jayawardene K, *Ethnic and Class Conflicts in Sri Lanka*, Colombo Centre for Social Analysis, 1985 for a precise account of the belief system and Tambiah, Stanley Jeyaraja - *Buddhism Betrayed? - Religion, Politics & Violence in Sri Lanka*, University of Chicago Press, 1992, for a detailed analysis.

³ Dayan Jayatilaka in 'The water this time', Asian Tribune, : 2005-01-02

⁴ The 'indifference' is not only demonstrated by the Sri Lankan Government's failure to deal with the victims of the tsunami in the Northeast but also its refusal to permit the UN Secretary General from visiting the Tamil region to ascertain for himself the extent of the damage.

⁵ *"The right (to self determination) may even ripen if, given the relative numbers of majority versus minority groups, the minority cannot effectively ever win in issues of importance to them. This, then, becomes a violation of governance rights. In Sri Lanka, in addition to the clear oppression of the Tamil minority, the Tamil people and their leadership are unable to effectively address anything of importance to the Tamil people: fishing rights, environmental concerns, or even post-Tsunami relief efforts"- International Educational Development, a non-governmental organization on the Roster under agenda item on the right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation"* **February 2006 at the 62nd sessions of the UN Commission on Human Right".**